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April 23, 2015

Via Email and U.S. Mail

(jeremy.lasiter@arkansas.gov)

Jeremy C. Lasiter, General Counsel
Arkansas Department of Education
Four Capitol Mall
Room 404-A
Little Rock, Arkansas 72201

Re: Act 560 of 2015

Dear Jeremy:

This firm represents the Brinkley School District ("District"). The District's Board of Directors has determined that the District not participate in school choice under the School Choice Act of 2013, as amended in 2015 by the General Assembly in passing Act 560 (collectively, the "Acts"). The reason is that the District is a party to at least two desegregation lawsuits that are still active: *Jackson, et al. v. Brinkley School District*, 425 F.2d 211 (8th Cir. 1970); and *Fields v. Brinkley School District*, 353 Ark. 483, 102 S.W.3d 502 (2003). The desegregation obligations of these cases prohibit the District from taking any action, or refraining from taking any action, the natural and probable consequence of which would be a segregative impact within the District (i.e., the creation, maintaining, or increasing of racially identifiable schools). Permitting school choice under the Acts would have such an impact. Allowing school choice would, therefore, be in conflict with the District's desegregation obligation still outstanding. The District further relies upon Ark. Code Ann. § 6-18-317(a), which prohibits transfers if either the resident or residing district has ever been under a desegregation-related court order. See *Edgerson on behalf of Edgerson v. Clinton*, 86 F.3d 833 (8th Cir. 1996).

In that same regard, I am enclosing orders from both cases to support this letter. I believe all the information specified by Ark. Code Ann. § 6-13-113(b) is included in the enclosures. If not, please let me know and I will furnish it. I know review of these old desegregation lawsuit files is impractical, and sometimes impossible, because of their age and volume.

Jeremy C. Lasiter, Esq.
April 23, 2015
Page 2

Thank you for your cooperation. Please do not hesitate to contact me should you have questions concerning this matter.

Very truly yours,


Jay Bequette

Enclosures

cc: Mr. Arthur Tucker

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Ceiners JACKSON et al., Appellants, v. MARVELL SCHOOL DISTRICT NO. 22 et al., Appellees.

Earlis JACKSON et al., Appellants, v. MARVELL SCHOOL DISTRICT NO. 22 et al., Appellees

No. 20124

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

425 F.2d 211; 1970 U.S. App. LEXIS 9514

April 29, 1970

SUBSEQUENT HISTORY: **[**1]** Rehearing Denied May 18, 1970.**CASE SUMMARY**


PROCEDURAL POSTURE: Appellant minority students sought review of an order of the United States District Court, which approved a plan by appellee school district to carry out a previously ordered desegregation of the district's schools.


OVERVIEW: After two previous appeals, on remand the district court was directed to implement a desegregation plan. The district submitted a four-part proposal to achieve that result, which the minority students approved. The district, however, then reneged on the fourth part of the plan, which was aimed at desegregating not only the facilities, but also the classes in the district. After a hearing on the student's motion for contempt, the district court approved the plan without the part which the district previously violated. The court reversed, finding error in the district court's "ingenious effort to circumvent" its previous decision. The court remanded, directing the district court to enter an order requiring the district to fully and effectively desegregate not only all facilities, but the faculty and classes effective at the beginning of the next school year.

OUTCOME: The court reversed the district court order, which approved over the objection of minority students, a plan by the school district to carry out a previously ordered desegregation of the district's schools. The court remanded, directing entry of an order requiring the district to fully and desegregate not only all facilities but the faculty and classes effective at the beginning of the 1970-71 school year.

CORE TERMS: school district, school year, assigned, segregation, faculty, grades, site, desegregation, superintendent, desegregate, contempt

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Constitutional Law > Equal Protection > Race 

HN1  It is settled doctrine that segregation of the races in classrooms constitutes invidious discrimination in violation of the Fourteenth Amendment to the Constitution. More Like This Headnote | *Shepardize*: Restrict By Headnote

JUDGES: Matthes, Lay  and Heaney , Circuit Judges.

OPINION BY: PER CURIAM

OPINION

[*211] This is the third time we are required to determine whether the appellee school district has adopted and placed into effect a plan for fully desegregating its schools.

In *Jackson II*, decided on October 2, 1969, reported at 416 F.2d 380, 8 Cir., we **[*212]** reversed the judgment of the district court and directed it "to require the Marvell School District to file * * * a plan which will convert the present organization of the public schools of Marvell to a unitary, nonracial system. The plan shall eliminate all vestiges of the freedom-of-choice provisions and shall be fully implemented and become effective no later than January 19, 1970." *Id.* at 385.

On remand, the district court entered an order on October 16, 1969, directing the district to submit a plan not later than December 1, 1969, and granting plaintiffs 20 days thereafter to respond. In compliance with that order, the district filed a report in which it proposed to restructure the schools beginning January 19, 1970, as follows: (a) all students in grades 1 through 3 **[*2]** were to be assigned to the site now known as Marvell Elementary School; (b) all students in grades 4 through 9 were to be assigned to the site now known as Tate Elementary School and Tate High School; (c) all students in grades 10 through 12 were to be assigned to the site now known as Marvell High School; (d) all faculty members willing to remain were to be retained and will be so assigned as to realize the maximum utilization of their training and experience without regard to their race.

Under date of December 15, counsel for plaintiffs informed counsel for the school district that in light of the plan proposed by the school district "to which plaintiffs have no objections at this time" there was no need for a hearing to be held.

In the meantime, however, and apparently without knowledge by plaintiffs' counsel at the time the aforesaid letter was written, the superintendent of the district notified all parents in writing of the restructuring of the schools as shown above and further informed them that "insofar as possible students will stay with their same teachers."

The notice from the superintendent precipitated the filing by plaintiffs on January 12, 1970, of a motion to **[*3]** cite the defendants for contempt of court. The motion was premised upon the proposal of the defendants to continue segregation of the classes.

Evidence was not heard on the motion for citation for contempt. However, the district court did hold a hearing on January 14, 1970, at which time the judge ruled from the bench that the plan submitted would be approved with the exception of Subsection (d) relating to the faculty. On January 19, the court's formal order, dated January 16, approving the plan as modified with respect to Subsection (d), was filed. In due time, plaintiffs appealed from that order.

The effect of the approval of the order as demonstrated by correspondence attached to appellees' brief between counsel for appellees and the district judge is to approve the segregation of the races among classes within the several facilities for the remainder of the 1969-70 school year.

Plaintiffs challenge the propriety of the court's failure to require the district to desegregate not only the school facilities but the classes beginning January 19, 1970. They insist that we should reverse and require immediate desegregation of the classes.

We hold the court fell into error **[**4]** in sanctioning the district's ingenious effort to circumvent the plain meaning of our decision. ^{HNI} It is settled doctrine that segregation of the races in classrooms constitutes invidious discrimination in violation of the Fourteenth Amendment to the Constitution. *Johnson v. Jackson Parish School Board*, 420 F.2d 692 (5th Cir., 1970). See *McNeese v. Board of Education*, 373 U.S. 668, 83 S. Ct. 1433, 10 L. Ed. 2d 622 (1963); *McLaurin v. Oklahoma State Regents*, 339 U.S. 637, 70 S. Ct. 851, 94 L. Ed. 1149 (1950).

Accordingly, we reverse and remand to the district court. Upon due consideration and with particular reference to the brief time remaining in the school year, we refrain from interfering with **[*213]** the assignment of students in the Marvell School District for the 1969-70 school year. ¹ However, we direct the district court to enter an order requiring the district to fully and effectively desegregate not only all facilities but the faculty and classes effective at the beginning of the 1970-71 school year.

FOOTNOTES

¹ See *Hall v. St. Helena's Parish Board of Education*, 424 F.2d 320 (5th Cir., 1970), in which the court recalled its previous order of March 6, 1970, ordering immediate desegregation when it discovered that the St. Helena Parish schools were to close for the summer recess at the end of April.

[5]** Plaintiffs are allowed costs on this appeal.







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Citation: **425 F.2d 211**

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352 Ark. 483, *; 102 S.W.3d 502, **;
2003 Ark. LEXIS 185, ***

Fannie FIELDS, Annetta Carruth, Casey Cox, Loretta Jarrett, and Willie Spriggs v. MARVELL
SCHOOL DISTRICT

02-1336

SUPREME COURT OF ARKANSAS

352 Ark. 483; 102 S.W.3d 502; 2003 Ark. LEXIS 185

April 10, 2003, Decided

PRIOR HISTORY: [***1] APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, SEVENTH
DIVISION, NO. CIV 2002-8705; HON. JOHN PLEGGE, JUDGE.
Fields v. Plegge, 350 Ark. 57, 84 S.W.3d 446, 2002 Ark. LEXIS 513 (Ark., 2002)

DISPOSITION: Affirmed.**CASE SUMMARY**

PROCEDURAL POSTURE: Appellant candidates appealed an order of the Pulaski County Circuit Court (Arkansas), declaring that the positions that they filed for as candidates on the appellee school board were not open for election. The trial court ruled that the school district was in compliance with the Voting Rights Act as well as the court's desegregation order of 1971. The court further ruled that there was only one position on the board open for election.

OVERVIEW: Because its black voting-age population totaled over 50 percent, the school district, pursuant to Ark. Code Ann. § 6-13-631, changed to a zone-election system, pursuant to federal and state law. Ark. Code Ann. § 6-13-631(e) required that the school board members had to draw lots, so that no more than two positions were open for election at the same time. The candidates argued that Ark. Code Ann. § 6-13-631 required that a new board had to be elected any time a district engaged in rezoning of boundaries. The appellate court held that, under Ark. Code Ann. § 6-13-631(g)(1), there were clear exemptions that allowed a school district to deviate from the requirements of Ark. Code Ann. § 6-13-631. The following evidence was relevant: (1) a 1971 federal desegregation order was introduced, and the superintendent testified that the school was still operating under that order; (2) the superintendent also testified that he sent reports to the federal court; and (3) a demographer's report showed the school district was in compliance with the Voting Rights Act of 1965, because it elected its school board members from zoned districts. Thus, the candidates' argument was rejected.


OUTCOME: The appellate court agreed with the trial court's determination that the school district met the exceptions set out in the applicable statute as operating under a 1971 federal desegregation order, as well as having a zoned school board, meeting the requirements of

federal law. Accordingly, the trial court's decision that the only seat open for election was one expired at-large position, was affirmed.

CORE TERMS: school districts, election, school board, zone, desegregation, elected, Voting Rights Act, at-large, census, zoned, decennial, rezoning, seat, board of directors, candidate, exemption, ballot, elect, single-member, expired, annual, statutory interpretation, de novo, substantially equal, draw lots, written order, superintendent, voting-age, placement, scheduled


LEXISNEXIS® HEADNOTES

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Civil Procedure > Jurisdiction > Subject Matter Jurisdiction > Jurisdiction Over Actions > General Overview 


Civil Procedure > Appeals > Appellate Jurisdiction > General Overview 


Governments > Courts > Rule Application & Interpretation 


HN1  When an appeal involves an issue of statutory construction, the appellate court's jurisdiction is pursuant to Ark. Sup. Ct. & Ct. App. R. 1-2(b)(6). [More Like This Headnote](#)


Education Law > Administration & Operation > Boards of Elementary & Secondary Schools > Authority 


Governments > Local Governments > Elections 

HN2  In the context of school districts, and the effect of a minority population on election, according to Ark. Code Ann. § 6-13-631(b)(2), each zone must have a "substantially equal population" and have boundaries based on the most recent federal decennial census information. Ark. Code Ann. § 6-13-631(e) also requires that after a new school board is elected, the members must draw lots to determine the length of their terms, so that no more than two positions are open for election at the same time. [More Like This Headnote](#)


Civil Procedure > Appeals > Standards of Review > De Novo Review 


Governments > Legislation > Interpretation 


HN3  The appellate court reviews issues of statutory interpretation de novo, as it is for the appellate court to decide what a statute means. In this respect, the appellate court is not bound by the trial court's decision. However, in the absence of a showing that the trial court errs, its interpretation will be accepted as correct on appeal. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

Civil Rights Law > Voting Rights > Preclearance 


Education Law > Administration & Operation > Boards of Elementary & Secondary Schools > Authority 

Governments > Local Governments > Elections 

HN4  See Ark. Code Ann. § 6-13-631(a).

Civil Rights Law > Voting Rights > Preclearance 

Education Law > Administration & Operation > Boards of Elementary & Secondary Schools > Authority 

Governments > Local Governments > Elections 

HN5 See Ark. Code Ann. § 6-13-631(f).

Education Law > Administration & Operation > Boards of Elementary & Secondary Schools > Authority

Governments > Local Governments > Elections

HN6 In the context of school districts having a 10 percent or greater minority population, under Ark. Code Ann. § 6-13-631(g)(1), school districts meeting certain criteria are specifically exempted from the provisions of Ark. Code Ann. § 6-13-631. More Like This Headnote

Civil Rights Law > Voting Rights > Preclearance

Education Law > Administration & Operation > Boards of Elementary & Secondary Schools > Authority

Governments > Federal Government > Elections

HN7 See Ark. Code Ann. § 6-13-631(g)(1).

Civil Rights Law > Voting Rights > Preclearance

Education Law > Administration & Operation > Boards of Elementary & Secondary Schools > Authority

Governments > Local Governments > Elections

HN8 There are clear exemptions that allow a school district to deviate from the requirements of Ark. Code Ann. § 6-13-631. More Like This Headnote

Civil Procedure > Appeals > Reviewability > Preservation for Review

HN9 It is well settled that the appellate court will not consider arguments raised for the first time on appeal. More Like This Headnote | *Shepardize*: Restrict By Headnote

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HEADNOTES

1. **Statutes -- construction -- standard of review.** -- The supreme court reviews issues of statutory interpretation *de novo*, as it is for that court to decide what a statute means; in this respect, the supreme court is not bound by the trial court's decision; however, in the absence of a showing that the trial court erred, its interpretation will be accepted as correct on appeal.

2. **Appeal & error -- arguments not raised below -- not reached on appeal.** -- The supreme court will not consider arguments raised for the first time on appeal.

3. **Schools & school districts -- appellee district met exception set out in Ark. Code Ann. § 6-13-631(g)(1)(A)(Repl. 1999) -- trial court's determination not error.** -- Where the school was still operating under the 1971 federal desegregation order and the district was in compliance with the Voting Rights Act because it elected its school board members from zoned districts, the school district met the exception set out in section Ark. Code Ann. § 6-13-631(g)(1)(A)(Repl. 1999), as operating under the 1971 federal desegregation order, as well as the exception set forth in subsection (g)(1)(C), having a zoned school board meeting the

requirements of the Voting Rights Act; accordingly, the trial court did not err in determining that the only seat open for election on the September 7 ballot was the one expired at-large position; the school district was not required to elect an entirely new school board in compliance with Ark. Code Ann. § 6-13-631.

COUNSEL: J.F. Valley, Esq., P.A., by: J.F. Valley, for appellant.

Brazil, Adlong & Winningham, PLC, by: William Clay Brazil, for appellee.

JUDGES: Donald L. Corbin, Justice.

OPINION BY: Donald L. CORBIN

OPINION

[*483] [*503] Donald L. Corbin, Justice. This case involves a dispute over a school board election. Appellants Fannie Fields, Annetta Carruth, Casey Cox, Loretta Jarrett, and Willie Spriggs appeal the order of the Pulaski County Circuit Court, declaring **[*484]** that the positions that they had filed for as candidates on the Marvell School Board were not open for election. On appeal, they argue that the trial court erred in determining that the school district was not required to elect an entirely new school board in compliance with Ark. Code Ann. § 6-13-631 (Repl. 1999). ^{HN1}¶As this is an appeal involving an issue of statutory construction, our jurisdiction is pursuant to Ark. Sup. Ct. R. 1-2(b)(6). We find no error and affirm.

Appellee Marvell School District previously elected its school board via an at-large **[***2]** election system. Because its black voting-age population totaled 53.04% after the 1990 decennial census, the District, pursuant to section 6-13-631, changed to a zone-election system, meaning that five of the seven board members were elected from zoned districts, while the remaining two members were elected at-large. ^{HN2}¶According **[**504]** to section 6-13-631(b)(2), each zone must have a "substantially equal population" and have boundaries based on the most recent federal decennial census information. Section 6-13-631(e) also requires that after a new school board is elected, the members must draw lots to determine the length of their terms, so that no more than two positions are open for election at the same time. This has been the election method for the school district's board members since 1994.

The 2000 decennial census showed that the district's black voting-age population was 54.87% and that zones one, two, and three had a black majority population, just as they did in the previous census. The school district hired Dr. David England, a demographer at Arkansas State University, to review **[***3]** its election zones and determine if the school district still remained in compliance with section 6-13-631 and the Voting Rights Act of 1965. Dr. England had drafted a report for the district in 1994 in order to bring it into initial compliance with the requirements of section 6-13-631.

According to Dr. England's 2000 report, Marvell School District remained in compliance because it maintained a plan for five single-member zones as required by section 6-13-631. Because the 2000 census information revealed a population change in zones three and four, Dr. England recommended realigning those two zones by shifting their boundary line by approximately one block. The population change was the result of construction of a housing project in zone four. After Dr. England's study was complete, the board voted to adopt his plan, **[*485]** which thereby resulted in the adjustment of the boundary line separating zones three and four. Black voters, however, continued to be in the majority in three of the five single-member zones, specifically zones one, two, and three. Thereafter, on May 21, 2002, the **[***4]** District sent a letter to the Arkansas Department of Education, stating that it was in compliance with the requirements of the section 6-13-631.

In August 2002, Appellants filed as candidates for unexpired positions on the District's board of

directors. Only one of the incumbents, running for the open at-large position, filed as a candidate. Each Appellant was certified by the Phillips County Election Commission as candidates to be placed on the September 17, 2002 ballots. Thereafter, the District filed a lawsuit seeking a temporary restraining order or preliminary injunction to prevent Appellants from appearing on the ballot, because it was the District's contention that the only seat open for election was one at-large position with an expired term.

A hearing was held in the circuit court on September 6, 2002. Testifying at this hearing was Ulicious Reed, superintendent of the school district. He testified that the school district continues to operate under a desegregation order from 1971. He stated that although the school was now fully integrated, it had to continue to monitor student placement because of a decrease in student enrollment, particularly [***5] of white students. He also testified that the election procedures instituted in 1994, pursuant to section 6-13-631, brought the district into compliance with the Voting Rights Act. Reed further testified that it was the school district's position that there was only one school board seat open for election.

Appellants took the position at this hearing that section 6-13-631 required the election of an entirely new school board after the district rezoned. The school district asserted that it was exempt from the requirements of section 6-13-631 because it met two exceptions set forth in the statute, namely that it was operating under [**505] a desegregation order and that it was in compliance with the Voting Rights Act.

After considering the testimony and arguments of counsel, the trial court ruled that the school district was in compliance with the Voting Rights Act, as well as the court's desegregation [**486] order of 1971. The court further ruled that there was only one position on the board open for election. In a subsequent written order, dated September 11, 2002, the trial court reiterated [***6] its finding that section 6-13-631 did not require the school district to elect an entirely new school board because it was still operating under a federal desegregation order, was in compliance with the Voting Rights Act, and was in compliance with the requirements of section 6-13-631. The order directed the county clerk to count only those votes cast for the at-large position.

Appellants filed an appeal of the trial court's order with this court on the same day as the trial court's written order was filed. Appellants sought a writ of certiorari and a stay of the election scheduled for September 17. In a *per curiam* opinion, this court denied the writ and motion on the basis that this court did not have the authority to enjoin a regularly scheduled election. See *Fields v. Plegge*, 350 Ark. 57, 84 S.W.3d 446 (2002). This appeal followed.

Appellants raise only one point on appeal. They argue that the trial court erred in its interpretation of section 6-13-631. Specifically, Appellants argue that a plain reading of the statute reveals that a new school board [***7] must be elected any time a district engages in rezoning of its boundaries, as did Marvell School District in the present case. The school district counters that it is exempt from the provisions of section 6-13-631, because it is in compliance with the Voting Rights Act, as it already has a zone-elected board of directors. It claims an additional exemption based on the fact that it was operating under a 1971 federal desegregation order. We agree with the school district.

HN3 ¶ We review issues of statutory interpretation *de novo*, as it is for this court to decide what a statute means. *Clayborn v. Bankers Standard Ins. Co.*, 348 Ark. 557, 75 S.W.3d 174 (2002); *Fewell v. Pickens*, 346 Ark. 246, 57 S.W.3d 144 (2001). In this respect, we are not bound by the trial court's decision; however, in the absence of a showing that the trial court erred, its interpretation will be accepted as correct on appeal. *Harris v. City of Little Rock*, 344 Ark. 95, 40 S.W.3d 214 (2001); *Norman v. Norman*, 342 Ark. 493, 30 S.W.3d 83 (2000).

Section 6-13-631 provides in relevant [***8] part as follows:

HN4 ¶ [**487] (a) Beginning with the 1994 annual school election, the qualified electors of a [**506] school district having a ten percent (10%) or greater minority

population out of the total population, as reported by the most recent federal decennial census information, shall elect the members of the board of directors as authorized in this section, utilizing selection procedures in compliance with the federal Voting Rights Act of 1965, as amended.

The statute then sets forth a method for electing a brand new school board from five zoned districts, with two at-large positions. Once the new school board is elected, each member must draw lots to determine the length of his or her term; thus, preventing more than two seats being up for election at the same time.

The statute further provides:

^{HN5} ¶(f)(1) After each federal decennial census and at least ninety (90) days before the annual school election, the local board of directors, with the approval of the controlling county board of election commissioners, shall divide each school district having a ten percent (10%) or greater minority population into single-member zones. The zones shall be based on the most recent **[***9]** federal decennial census information and substantially equal in population.

(2) At the annual school election following the rezoning, a new school board shall be elected in accordance with procedures set forth in this section.

^{HN6} ¶In subsection (g)(1), however, school districts meeting any of the following criteria are specifically exempted from the provisions of this section:

^{HN7} ¶(A) A school district that is currently operating under a federal court order enforcing school desegregation or the federal Voting Rights Act of 1965, as amended;

(B) A school district that is operating under a preconsolidation agreement that is in compliance with the federal Voting Rights Act of 1965, as amended;

(C) A school district that has a zoned board meeting the requirements of the federal Voting Rights Act of 1965, as amended; and

(D) A school district that a federal court has ruled is not in violation of the federal Voting Rights Act of 1965, as amended, so long as the court order is in effect.

[*488] Thus, ^{HN8} ¶there are clear exemptions that allow a school district to deviate from the requirements of section 6-13-631. The 1971 federal desegregation order **[***10]** was introduced at trial, and Superintendent Reed testified that the school was still operating under that order. Specifically, he stated that they constantly monitored student placement. He also testified that he sends reports to the federal court when requested and recently submitted a recruitment report. Dr. England's report stating that the school district was in compliance with the Voting Rights Act because it elected its school board members from zoned districts was also introduced at the hearing. Appellants produced no evidence to dispute the fact that these two exceptions applied in this case.

Appellants now assert that it is absurd for the school district to claim that it is entitled to exemptions when it took the action of hiring someone to study the population information and undertake a rezoning as the statute requires. According to Appellants, because the school district took the action of rezoning it is now required to comply with the remainder of the statute and hold a new school board election as set forth in section 6-13-631(f)(2). Appellants, however, failed to raise this argument before the trial court. Likewise, Appellants did **[***11]** not argue below that the school district's act of rezoning constituted a waiver of any claimed exemption. ^{HN9} ¶It is well settled that this court will not consider arguments raised for the first time on appeal. See, e.g., *Arkansas Blue Cross & Blue Shield v. Hicks*, 349 Ark. 269, 78 S.W.3d 58 (2002); *Laird v. Shelnut*, 348 Ark. 632, 74 S.W.3d 206 (2002).

We agree with the trial court's determination that the school district meets the exception set out in section 6-13-631(g)(1)(A), as operating under the 1971 federal desegregation order, as well as the exception set forth in subsection (g)(1)(C), having a zoned school board meeting the requirements of the Voting Rights Act. Accordingly, we cannot say that the trial court erred in determining that the only seat open for election on the September 17 ballot was the one expired at-large position.

Affirmed.







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